

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Denmark and Kaukauna, Wisconsin)

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) MM Docket No. 99-36  
) RM-9372  
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NOTICE OF PROPOSED RULE MAKING

Adopted: January 27, 1999

Released: February 5, 1999

Comment Date: March 29, 1999

Reply Date: April 13, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Midwest Dimensions, Inc. ("Midwest"), requesting the substitution of Channel 285C3 for Channel 285A at Kaukauna, Wisconsin, and reallocation of Channel 285C3 to Denmark, Wisconsin, as that community's first local service. Midwest also requests modification of its license for Station WPCW, Kaukauna, to specify operation on Channel 285C3 at Denmark. Midwest indicated that it would file an application for Channel 285C3 at Denmark if the channel is allotted to the community.

2. Midwest filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Modification of License R&O"), FCC Rcd 4870 (1989), recon. granted in part ("Modification of License MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Midwest contends that the residents of Denmark will be provided with a first local service if the reallocation is granted. According to Midwest, Denmark has its own police department, municipal water system, library and post office, along with a volunteer fire department, several churches and Denmark is the principal member of the Denmark Unified School District. Further, Denmark's business and professional community provide goods and services to a vast geographical area.

3. We believe Midwest's proposal warrants consideration. However, since Midwest proposes to relocate its transmitter site, the reallocation could result in some areas losing existing reception

services.<sup>1</sup> Therefore, Midwest is requested to provide data reflecting the gain and loss areas that would result from the reallocation of Channel 285C3 from Kaukauna to Denmark. Midwest is also requested to submit information demonstrating the overall public interest benefits that would be derived from the reallocation. While Midwest asserts that the reallocation would provide Denmark with its first local aural transmission service, no information is provided showing what service will remain in Kaukauna to serve the needs of that community. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).<sup>2</sup>

4. We recognize that neither community, Denmark or Kaukauna, is located within an Urbanized Area. However, if a station requests to change its community of license to one that is outside an urbanized area but whose signal would place a city grade, 70 dBu signal, over 50% or more of an Urbanized Area, the proponent is required to provide the same showings as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). If Channel 285C3 is allotted to Denmark, our engineering analysis shows that Station WPCCK will provide over 50% coverage of the Green Bay, Wisconsin Urbanized Area with a 70 dBu signal from Midwest's specified site.<sup>3</sup> Therefore, Midwest is requested to provide a showing that Denmark warrants a first local service preference. See Modification of License MO&O, supra, at 7097.<sup>4</sup>

5. An engineering analysis has determined that Channel 285C3 can be allotted to Denmark, Wisconsin, in compliance with the Commission's minimum distance separation requirements at Midwest's specified site.<sup>5</sup> In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 285C3 at Denmark, Wisconsin, or require Midwest to demonstrate the availability of an additional equivalent class

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<sup>1</sup> The Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, supra, at 5 FCC Rcd 7097.

<sup>2</sup> The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

<sup>3</sup> Our engineering analysis also shows that Channel 285A at Kaukauna covers all of the Appleton-Neenah-Menasha Urbanized Area with its 60 dBu contour as well as a large portion of the Green Bay Urbanized Area. Channel 285C3 at the new site will not cover any portion of the Appleton-Neenah-Menasha Urbanized Area.

<sup>4</sup> See also, Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D. C. Cir. 1951; RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), and Elizabeth City, North Carolina and Chesapeake, Virginia, 7 FCC Rcd 5815 (1992).

<sup>5</sup> The coordinates for Channel 285C3 at Denmark are 44-24-38 and 87-34-20.

channel for use by such parties.

6. In view of the fact that the proposed allotment could provide a first local service to Denmark, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 285C3 to Denmark. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Denmark and Kaukauna, as follows:

| Community           | Channel No. |          |
|---------------------|-------------|----------|
|                     | Present     | Proposed |
| Denmark, Wisconsin  | -----       | 285C3    |
| Kaukauna, Wisconsin | 285A, 276C3 | 276C3    |

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before , 1998, and reply comments on or before 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Eugene T. Smith  
715 G Street, S.E.  
Washington, D. C. 20003

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other

parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.